

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 92 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAHLADJI NATHAJI THAKORE

Versus

JAVANJI KALAJI THAKORE

Appearance:

1. Second Appeal No. 92 of 2001
MR SK PATEL for Appelant No. 1
MR MANOJ S JOSHI for Appellant No. 1
MR HN BRAHMBHATT for Respondent No. 1
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CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 28/11/2001

ORAL JUDGEMENT

Amendment granted. Amendment to be carried out
forthwith.

2. Heard Mr. S.K.Patel, who appeared for the appellant - original defendant and Mr. H.N. Brahambhatt, who appeared for the respondent - original plaintiff.

3. During the course of hearing, Mr. Patel has taken me through the judgement under challenge as well as some of the documents, which were on record of the case. It is the contention of Mr. Patel that the learned Trial Court has committed error in passing the decree in favour of the plaintiff - Society ignoring the fact that the court has no jurisdiction in view of the fact that the dispute is between the society and the member and in view of the provisions of Section 96 of the Co.Op. Societies Act, such dispute is not to be entertained by the Civil Court. He has also while referring to certain documents vehemently urged that the trial Court has not considered properly the evidence led by the defendant, wherein, it is the case of the defendant that he was the member of the society and by virtue of the fact that when at the time of forming the society, he has given signed requisite forms, which was submitted before the Assistant Registrar, Co.op. Societies, Mehsana. He has taken me through such application, which was submitted to the society in favour of the Assistant Registrar, Co.Op. Societies, Mehsana dated 21.5.1980. It is true that when I have perused the said document, it shows that the appellant was one the signatory in the said application. However, it is not possible for me to accept the contention of Mr. Patel relied upon on this document, because, this document were never proved and on the contrary, it is the case of the appellant - defendant that his father was working as a watchman in the said society and his father was getting salary from the society. He has further relied upon the document at Ex. 53, wherein, the Manager of Housing Finance Society Ltd. has issued letter dated 20th September, 1989 addressed to the appellant - defendant, wherein, it was stated that in reply to the letter issued by the appellant - defendant on 11th September, 1989, it was informed that the loan was granted in favour of the Giriraj Co.Op. Housing Society Ltd. for their 20 members for sum of Rs.4 lac and in the said letter, it was stated that the loan was sanctioned for the residence of all the members.

4. Mr. Patel has also while taking me through the order of Appellate Court has urged that the Trial Court has not considered the contention raised by the appellant as the appellant has challenged the judgement and decree passed by the Trial Court in favour of the plaintiff society, wherein, the Trial Court has on evidence has

decreed the suit and the plaintiff was to get possession of the premises occupied by the defendant, which was found to be illegal and it was further held that the defendant has no right to retain the possession of the disputed room and the defendant shall hand over the disputed room in favour of the plaintiff on or before 31st March, 1997. It is his contention that the trial Court has also committed error in dismissing the appeal and both the courts has not properly appreciated the evidence on record. Mr. Brahambhatt, learned advocate appearing for the respondent - plaintiff society has also while taking me through the judgements of both the courts and even on the pleadings, has vehemently urged that as found from the record, it is not the case of the defendant that he is not a member of the society, it was not legally permissible to take contention in the suit that the suit is not maintainable in view of the fact that the dispute is between the member and the society and accordingly, submitted that even both the courts have rightly considered that the possession of the disputed room are illegally possessed by the defendant and accordingly, the decree in favour of the plaintiff society was passed.

5. Considering the submissions made before me and on going through the judgement as well as documents placed before me for my consideration, it transpires that in the written statement the appellant-defendant has raised contention that he is the member of the society and suit filed by the society is not tenable before the Civil Court and the court has no jurisdiction to entertain the suit and as he is the member of the society, the dispute can lie before the Cooperative Court under the Cooperative Societies Act. Though, the contention was raised in the written statement, the suit proceeded without raising the issue about the maintainability of the suit. On going through the evidence, it is clear that the trial court was justified by not raising such dispute as there is nothing to indicate from the record that the appellant - defendant was at any point of time has become a member of the society and according to the respondent plaintiff, the defendant is a trespasser on the subject matter of the property. Even it is the case of the appellant-defendant that his father was working as watchman in the society. The trial Court has considered the evidence and passed decree in favour of the plaintiff by accepting the case of the plaintiff - society that the subject matter of the suit property is not occupied by the defendant as a member of the society. When the said judgement and decree was challenged by the appellant defendant by preferring appeal, even appellant-defendant

has not taken any ground about the jurisdiction of the court. The Appellate Court has also on examining the contention raised by the appellant-defendant and on examining the judgement of the trial Court, which was based on evidence, has dismissed the appeal and confirmed the decree passed by the trial Court.

6. Mr. Patel has relied upon certain documents and one of the document is document Ex. 53. On examining the said document, it is not going to help the appellant as at no point of time, the appellant-defendant has contended that he is the member of the society. Ex. 53 is the reply given by the Manager, Housing Finance Society Ltd. in reply to the letter issued by the appellant-defendant. Mr. Patel has not produced any document to show that he is the member of the society. If, the appellant-defendant is the member of the society, the society is required to issue share certificate or even issued any receipt to show that the appellant-defendant has paid any money in favour of the society. Even considering the submission and on examining the judgement under challenge, I found no substantial question of law involved in the present appeal, which is required to be examined by this Court and it is difficult for me to accept the contention of Mr. Patel that the trial Court as well as Appellate Court has committed error while decreeing the suit of the plaintiff society. As found from the judgements of both the courts, both the courts have recorded concurrent findings, for which, this court is not inclined to interfere with the said judgements. In my view, there is no substance in the present Second Appeal and the same is required to be dismissed.

7. At this juncture, Mr. Patel on getting instruction from his client, who is very much present in the Court has requested me to grant some time to enable his client to hand over peaceful possession of the disputed rooms to the plaintiff society. Appellant Prahladji Nathaji Thakore is also present before the Court and Mr. Patel on ascertaining from him had submitted that his client is prepared to give undertaking to this court that he will hand over the possession of the disputed rooms in favour of the plaintiff and requested that he may be given one year time for the same. Mr. Brahmbhatt, learned advocate appearing for the society on instructions from Chairman, who is also present in the court has submitted that society has no objection for granting time for one year. However, he submitted that in the interest of society, the appellant-defendant be directed to file undertaking

incorporating the required condition that he will hand over peaceful possession of the suit property in favour of the plaintiff on expiry of one year and during the period, he will not transfer the suit property by creating right over the property and further that, even the heirs or any member of the appellant shall not create any right in future over the suit property. Considering the stand taken by Mr. Brahambhatt as well as by the society and as agreed by the appellant, it will be in the fitness of think to accept the request made by Mr. Patel that the disputed rooms be permitted to be occupied for a period of one year. Accordingly, appellant-defendant be handed over the possession of the suit property (two rooms) in favour of the plaintiff peacefully on or before 30th September, 2002. The appellant has to file undertaking incorporating that he, his family members will not transfer the property to any third party and he will not part with the possession and he will hand over peaceful possession of the disputed rooms to the plaintiff society. The appellant to file undertaking within one week from today. Copy of the undertaking is also ordered to be furnished to the society. I told my Mr. Patel that the appellant has also initiated the proceedings in respect of the suit property before the Board of Nominee at Mehsana and which is pending and requested that the nominee court may not influence by the observations made by this court. It is made clear that the observations made by this court will not come in the way of the matter, which is pending in the Board of Nominee.

(D.K.Trivedi,J.)

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